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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE PLUMBERS)	No. CV 08 1170 JCS
AND STEAMFITTERS MANAGED HEALTH CARE)	
TRUST FUND; BOARD OF TRUSTEES OF THE)	FIRST AMENDED COMPLAINT FOR
U.A. LOCAL NO. 343 PENSION TRUST)	<u>AUDIT ENTRY AND FOR MONEY</u>
FUND; BOARD OF TRUSTEES OF THE U.A.)	
LOCAL NOS. 343 AND 355 DEFINED)	
CONTRIBUTION PLAN; BOARD OF TRUSTEES)	
OF THE U.A. LOCAL NO. 343 JOURNEYMAN)	
AND APPRENTICE TRAINING TRUST FUND;)	
AND BOARD OF TRUSTEES OF THE U.A.)	
LOCAL NO. 343 LABOR-MANAGEMENT)	
COOPERATION COMMITTEE TRUST FUND,)	
)	
Plaintiffs,)	
)	
v.)	
)	
RAMCON COMPANY, INC., A CALIFORNIA)	
CORPORATION)	
)	
Defendant.)	
)	

NATURE OF THE ACTION

1. This action arises under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") [29 U.S.C. § 1001, et seq.], and more particularly under Sections 1132 and 1145. This action also arises under Section 301 of the Labor Management Relations Act ("LMRA") [29 U.S.C. § 185]. Plaintiffs allege that

1 defendant has unlawfully refused to allow an audit and failed to
2 make required payments to joint labor-management trust funds and
3 employee benefit plans in violation of a collective bargaining
4 agreement and certain trust agreements.

5 **JURISDICTION AND VENUE**

6 2. Jurisdiction of this Court is invoked pursuant to 29
7 U.S.C. § 1132(e)(1) and 28 U.S.C. §§ 1331 and 1337. Pursuant to 29
8 U.S.C. § 1132(f), this Court has jurisdiction without respect to the
9 amount in controversy or the citizenship of the parties. This is an
10 action authorized and instituted pursuant to Sections 502 and 515 of
11 ERISA [29 U.S.C. §§ 1132 and 1145] and Section 301 of the LMRA [29
12 U.S.C. § 185].

13 3. Venue is proper in this District pursuant to Section
14 502(e)(2) of ERISA [29 U.S.C. § 1132(e)(2)] and Section 301(a) of
15 the LMRA [29 U.S.C. § 185(a)].

16 **PARTIES**

17 4. At all times material herein, each of the above-named
18 plaintiffs, with the exception of the Board of Trustees of the
19 U.A. Local No. 343 Labor-Management Cooperation Committee Trust
20 Fund, (hereinafter referred to as "Trust Funds") was and is the
21 Plan Administrator of employee benefit plans within the meaning of
22 Section 3(3) of the Employee Retirement Income Security Act as
23 amended (hereinafter "ERISA"), 29 U.S.C. Section 1002(3) and was
24 and is, a fiduciary within the meaning of Section 3(2)(A)(iii) of
25 ERISA, 29 U.S.C. § 1002(21)(A)(iii), and the named fiduciary
26 within the meaning of Section 402(a)(1) of ERISA, 29 U.S.C.
27 § 1004(a)(1). Plaintiff, Board of Trustees of the U.A. Local No.
28 343 Labor-Management Cooperation Committee Trust Fund, is a joint

1 labor-management trust fund organized pursuant to the provisions
2 of Section 302(c)(9) of the Labor Management Relations Act [29
3 U.S.C. § 186(c)(9)] and Section 6(b) of the Labor Management
4 Cooperation Act of 1978 [29 U.S.C. § 175a]. Each plaintiff has a
5 fiduciary duty to the employees of the defendant employer to
6 collect funds, to invest and administer said funds, and to protect
7 said funds from claims. Plaintiffs' principal place of business
8 is in Vallejo, California.

9 5. At all times material herein, defendant Ramcon Company,
10 Inc., a California corporation (hereinafter referred to as
11 "Employer") has been an employer within the meaning of the Na-
12 tional Labor Relations Act, as amended ("NLRA") [29 U.S.C. § 151,
13 et seq.], and more particularly under Section 152(2), and within
14 the meaning of ERISA, 29 U.S.C. § 1002(5). At all times material
15 herein, Employer has been engaged in the construction industry in
16 California and, as such, has been engaged in commerce or in an
17 industry affecting commerce within the meaning of the NLRA [29
18 U.S.C. § 152(6) and (7)] and within the meaning of ERISA [29
19 U.S.C. § 1002(11) and (12)].

20 6. At all times herein mentioned, Employer was and now is,
21 a corporation duly organized and existing under and by virtue of
22 the laws of the State of California. Employer's principal place
23 of business is in San Carlos, California.

24 **STATEMENT OF FACTS**

25 7. Within four years last past and within all time periods
26 relevant herein, Employer has been signatory to a collective
27 bargaining agreement with Local Union 343 of the United Associa-
28 tion of Journey and Apprentices of the Plumbing and Pipe Fitting

1 Industry of the United States, AFL-CIO (hereinafter "Local 343")
2 and various trust agreements establishing each of plaintiff
3 trusts. By said written agreements, Employer promised that he
4 would pay fringe benefit contributions to the Trust Funds, at
5 rates set forth by the agreements, for work performed by covered
6 employees, which amounts would be paid to the Trust Funds at their
7 place of business in Vallejo, California on or before the 20th day
8 of each successive month.

9 8. Under the terms of the aforementioned agreements,
10 Employer agreed to make contributions as required by those agree-
11 ments and to be subject to and bound by all terms and conditions
12 of the various trust agreements and further promised that in the
13 event any monthly contributions were not paid when due, Employer
14 would pay ten percent (10%) of the amount of the particular
15 contributions due to each plaintiff, as and for liquidated damages
16 and not as a penalty. Employer further agreed that the liquidated
17 damages so assessed are increased, if applicable, to twenty
18 percent (20%) in the event the employer does not pay the delin-
19 quent contributions owing before a lawsuit is filed. At all times
20 herein mentioned it was, and now is, impracticable and extremely
21 difficult to fix the amount of actual damages to plaintiffs as a
22 result of the nonpayment of said contributions. The amounts
23 agreed upon herein, as hereinbefore alleged, as and for liquidated
24 damages, represented and now represents a good faith effort to
25 ascertain and compensate for the damages caused the plaintiffs by
26 the nonpayment of said contributions. The liquidated damages are
27 added to the principal sum due and unpaid as of the 20th of the
28 month following the work month and the whole thereof shall bear

1 interest at the rate of twelve percent (12%) per annum from such
2 date until paid.

3 9. The Trust Agreements authorize and obligate the trustees
4 to adopt appropriate collection procedures to enforce, by suit in
5 court or otherwise, the prompt payment of contributions to the
6 funds and to audit the books and records of any participating
7 employer to determine whether or not contributions are being made
8 in accordance with the trust agreements and the respective collec-
9 tive bargaining agreement. Employer, in adopting the master
10 agreement and the trust agreements, agreed upon request of an
11 authorized representative of the Trust Funds, to permit auditors
12 designated by the Trust Funds to review any and all records
13 relevant to the enforcement of the provisions of the collective
14 bargaining agreement and the trust agreements.

15 10. The Trust Funds have established an audit procedure that
16 involves a review of payroll records as well as a test of internal
17 controls in the employer's bookkeeping system. The audit
18 procedure is intended to provide the basis of an opinion,
19 according to generally accepted auditing standards, by the
20 independent certified public accounting firm who perform the
21 audits whether appropriate contributions have been made for all
22 compensable hours.

23 11. The Trust Funds have demanded that Employer permit audit
24 entry for the period of August 1, 2006 through January 31, 2007.
25 Employer has refused to provide all of the records requested to
26 complete this audit. In particular, the Trust Funds have demanded
27 records for the month of September 2006 which the employer has
28 failed to produce. In the absence of such audit and review of

1 Employer's books and records as demanded, plaintiffs are not able
2 to determine whether or not Employer has fully met all of its
3 obligations to report and pay trust fund contributions for each of
4 its employees. Plaintiffs have no adequate or speedy remedy at
5 law.

6 12. Employer further agreed to pay the cost of the audit if
7 the audit shows that it owes the lesser of \$500.00 or 5% of all
8 contributions due during the period covered by the audit. In
9 addition, Employer also agreed that if it failed or refused to
10 permit audit entry as required by the aforementioned agreements,
11 Employer would be responsible for all of the costs caused by that
12 failure to provide records, even if the audit shows no money due.

13 13. On or about July 9, 2007, a partial audit of the books
14 and records was completed. This audit revealed more fringe
15 benefit contributions were not submitted to the Trust Funds for
16 the months of August, October and November 2006. This partial
17 audit shows the \$14,589.56 is due to the Trust Funds as of March
18 20, 2008, as shown in Exhibit 1, attached hereto and incorporated
19 by reference as though fully set forth; and that sum is due and
20 owing together with interest at the rate of 12% per annum from
21 March 20, 2008 until paid. Additionally, the employer is
22 obligated to pay the cost of the audit in the amount of \$2,602.00.

23 14. It has been necessary for plaintiffs to engage counsel
24 for the purpose of enforcing Employer's obligations under the
25 aforementioned agreements. By said agreements, Employer agreed to
26 pay attorneys' fees and costs expended by the Trust Funds in
27 securing compliance, in addition to any other relief provided by
28 the court. Plaintiffs are entitled to reasonable attorneys' fees,

1 auditor's fees, and other reasonable expenses incurred in
2 connection with this matter due to the failure of defendant to
3 submit to audit entry as demanded by plaintiffs.

4 15. Plaintiffs have complied with all conditions on their
5 part to be performed under the terms of the collective bargaining
6 agreement and the trust agreements.

7 WHEREFORE, plaintiffs pray judgment against Employer as
8 follows:

9 1. For an order compelling Employer to submit to a complete
10 audit as requested and to allow the inspection of the books,
11 records, papers and reports as set out in the audit request;

12 2. For such damages by way of additional contribution
13 shortages, liquidated damages and interest as are disclosed by
14 complete audit;

15 3. For the sum of \$14,589.56, plus interest on the whole
16 sum due at the rate of twelve percent (12%) per annum from March
17 20, 2008 until paid as provided under the Plan and 29 U.S.C.
18 §1132(g)(2);

19 4. For the sum of \$2,602.00 for the cost of performing the
20 audit, plus interest at the rate of twelve percent (12%) per annum
21 from March 20, 2008 until paid as provided under the Plan and 29
22 U.S.C. §1132(g)(2);

23 5. For reasonable attorneys' fees; and
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1 6. For cost of suit and such other further relief as the
2 Court deems just and proper.

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4 Dated: April 15, 2008

McCARTHY, JOHNSON & MILLER
LAW CORPORATION

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6 By: /S/LORI A. NORD
7 LORI A. NORD
8 Attorneys for Plaintiff
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EXHIBIT 1
UA Local No. 343 Trust Funds
v. Ramcon

Work Month	Fringe Benefits	Liquidated Damages	Subtotal	Interest to 3/20/08	Total
8/06	4,795.90	959.00	5,754.90	1,035.88	6,790.78
10/06	4,035.46	807.09	4,842.55	774.81	5,617.36
11/06	1,580.74	316.15	1,896.89	284.53	2,181.42
TOTALS:	10,412.10	2,082.24	12,494.34	2,095.22	14,589.56*

*Interest continues to accrue on this sum at the rate of twelve percent (12%) per annum from March 20, 2008 until paid as mandated by 29 U.S.C. § 1132(g)(2) and the terms of the Agreements.

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the State of California. I am over the age of eighteen years and not a party to the within matter. My business address is 595 Market Street, Suite 2200, San Francisco, California 94105.

I am familiar with the practice of McCarthy, Johnson & Miller Law Corporation for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

I served the following document by placing a true copy of each such document for collection and mailing, in the course of ordinary business practice, with other correspondence of McCarthy, Johnson & Miller Law Corporation, located at 595 Market Street, Suite 2200, San Francisco, California 94105, on the date set forth below, enclosed in a sealed envelope with postage fully prepaid, addressed in the manner set forth immediately below this declaration.

Documents served:

FIRST AMENDED COMPLAINT FOR AUDIT ENTRY AND FOR MONEY

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Francisco, California, on April 15, 2008.

By: /S/Jan Proudfoot
Jan Proudfoot

Ramcon Company, Inc.
1659-C Industrial Road
San Carlos, CA 94070